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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN JOSE WATER COMPANY (U 168 W) for an Order Approving the Sale of the Main Office under Section 851 and Authorizing the Investment of the Sale Proceeds under Section 790.

Application 07-01-035
(Filed January 22, 2007)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

1. Summary

This ruling and scoping memo describes the issues to be considered in this proceeding and sets forth the procedural schedule for their resolution. As required by Rule 7.3 of the Commission's Rules of Practice and Procedure this ruling affirms the proceeding category and the need for evidentiary hearings (EHs), and designates the presiding officer following a Prehearing Conference (PHC) that was held on March 16, 2007.

This ruling establishes the dates for service of testimony and reply testimony and schedules EHs for July 10-11, 2007.

2. Background

On January 22, 2007, San Jose Water Company (San Jose Water) filed Application (A.) 07-01-035 requesting for an order approving the sale of its main office for \$4 million under § 851 of the Public Utilities Code and authorization to reinvest the net proceeds of the sale in infrastructure under § 790.¹ San Jose

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

Water's main office has been located in a historic landmark building at 374 West Santa Clara Street, in downtown San Jose for over seventy years. San Jose Water represents that, over the last ten years, it has outgrown the main office headquarters, and that the building's "historic landmark" designation prohibits the construction of the internal and external improvements needed to upgrade and expand facilities, implement technology to improve efficiency, provide needed security, and to comply with the Americans with Disabilities Act (ADA). San Jose Water proposes to sell the main office property and relocate the headquarters offices and walk-in customer service center functions to a new downtown San Jose location.

San Jose Water is asking the Commission to determine that the facility is no longer necessary and useful, and if the Commission does, San Jose Water intends to reinvest the proceeds in ratebase pursuant to § 790 by acquiring a new building in downtown San Jose to accommodate the company headquarter and a walk-in customer service facility.

If approved, the proposed transaction will affect the value of utility plant in service, the level of expenses considered for ratemaking purposes, and ultimately the revenue requirement and the rates charged for water. San Jose Water estimates that the impact of the proposed transaction will be an increase in San Jose Water's revenue requirement of \$1,870,782 for 2007, or an increase of 1.05% above the revenue requirement adopted for San Jose Water in its most recent general rate case, Decision (D). 06-11-015. San Jose Water seeks to recover 50% of the fixed costs through the service charge component and the remainder through the quantity rate component.

Notice of the application appeared on the Commission's Daily Calendar on January 24, 2007. A protest was received on February 23, 2007, from the Division of Ratepayer Advocates (DRA).

A PHC was held on March 16, 2007, where San Jose Water and Protestant were in attendance.

3. Scope of the Proceeding

The Application framed the primary issues: San Jose Water seeks Commission approval to sell its main office building for \$4 million under § 851.² San Jose Water also wants a determination from the Commission that the property is no longer necessary or useful, so it may reinvest the sales proceeds in infrastructure, pursuant to § 790.³ Finally, San Jose Water seeks approval of a rate increase resulting from this transaction, and approval of its proposed rate design for recovering the increased costs resulting from the transaction.

San Jose Water's application proposes a plan for addressing its facilities and office space needs that was among several alternatives it considered. DRA

² No public utility ...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its ...property necessary or useful in the performance of its duties to the public...without first having ... secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000), or for qualified transactions valued at five million dollars (\$5,000,000) or less, filed an advice letter and obtained a resolution from the commission authorizing it to do so. (§ 851.)

³ Whenever a water corporation sells any real property that was at any time, but is no longer, necessary or useful in the performance of the water corporation's duties to the public, the water corporation shall invest the net proceeds, if any, including interest at the rate that the commission prescribes for memorandum accounts, from the sale in water system infrastructure, plant, facilities, and properties that are necessary or useful in the performance of its duties to the public. (§ 790(a).)

does not necessarily oppose the application, but has concerns as to whether San Jose Water has selected the alternative which is in the best interests of ratepayers. DRA also questions whether the proposed rate increase is consistent with general rate case plan (RCP) for water utilities. DRA asserts that San Jose Water's request for a rate increase goes beyond the RCP, and any rate increase should be considered in San Jose Water's next general rate case.

A rate increase could result if the replacement cost is greater than the net proceeds received from the sale of the main office. Thus, the potential rate impact of this application is unknown at this time, partly because the application does not include information about the cost of facilities that will be purchased to replace the main office. At the PHC, San Jose Water indicated that it was close to reaching agreement on the purchase of a new office, and will serve supplemental testimony addressing the cost, location and other information concerning the new facility.⁴

San Jose Water stated that it believed the company could not decide on its own whether property was no longer necessary or useful, but that it must file an application pursuant to § 851.⁵ San Jose Water represents that it is required to ask for a Commission finding under § 851 that the main office is no longer necessary or useful. San Jose Water's supplemental testimony and DRA's testimony shall address this issue.

⁴ This proceeding will not decide whether San Jose Water may buy or lease facilities to replace its main office, but whether costs associated with the replacement of its main office should be included in rate base or rates.

⁵ T.R. 15.

D.06-05-041, among other things, addressed water company gains on sale and the reinvestment proceeds under § 790, and established tracking and application requirements for that purpose. D.06-05-041 requires water companies to provide the Director of the Water Division and the Director of the Division of Ratepayer Advocates 30 days' advance written notice whenever they plan to sell land, buildings, water rights, or all or part of a water system. This notice requirement applies to water company assets that the company believes are no longer used and useful, and does not preclude later review of such sales in a water company's GRC or a later proceeding. San Jose Water's supplemental testimony and DRA's testimony shall address the applicability of D.06-05-041 to this application.

In summary, the scope of this proceeding will address the following:

1. Does D.06-05-041 apply to the sale of San Jose Water's main office, and if so, does the application satisfy the requirements of that decision?
2. Does the application (that is, the request for permission to sell) require Commission approval under Pub. Util. Code § 851?
3. Should the Commission find that the main office and/or other real property being sold are no longer necessary or useful?
4. May San Jose Water use the proceeds from the sale of its main office building to acquire a new company headquarter and a walk-in customer service facility in downtown San Jose pursuant to § 790 of the Pub. Util. Code?
5. Should the Commission approve the proposed rate increase resulting from this transaction, and
6. Should the Commission approve the proposed rate design for recovering the increased costs resulting from the transaction?

4. Category and Need for Hearing

4.1. Category

We affirm the Commission's preliminary determination that this proceeding should be categorized as ratesetting.

4.2. Hearing Schedule

Hearings will be needed in this proceeding. We reserve the following dates for EHs: July 10-11, 2007. If parties reach agreement on all outstanding issues before the start of EHs, the hearing dates will be vacated upon the submission of a settlement agreement. Following is the schedule for testimony and hearings:

Applicant's Supplemental Testimony Due	April 30, 2007
DRA Testimony and Report Due	June 8, 2007
Rebuttal Testimony Due	June 29, 2007
Evidentiary Hearings	July 10 -11, 2007 at 10:00 a.m. 505 Van Ness Avenue, San Francisco, California
Post Hearing Opening Briefs Due	July 27, 2007
Reply Briefs Due	August 3, 2007
Proposed Decision Issued	October 3, 2007

4.3. Presiding Officer

This ruling designates Administrative Law Judge (ALJ) Richard Smith as the presiding officer in this proceeding.

5. Filing, Service and Service List

In this proceeding, there are several different types of documents participants may prepare. Each type of document carries with it different obligations with respect to filing and service.

Parties must file certain documents as required by the Rules or in response to rulings by either the Assigned Commissioner or the ALJ. All formally filed documents must be filed with the Commission's Docket Office and served on the service list for the proceeding. Article 1 of the Rules contains all of the Commission's filing requirements. Resolution ALJ-188 sets forth the interim rules for electronic filing, which replaces only the filing requirements, not the service requirements.

Other documents, including prepared testimony, are served on the service list but not filed with the Docket Office. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 of the Commission's Rules of Practice and Procedure for all documents, whether formally filed or just served.

This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, I require concurrent e-mail service to all persons on the service list for whom an e-mail address is available, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: A.07-01-035 – SJWC Main Office. In addition, the party sending the e-mail should briefly describe the attached communication; for example, "*Brief.*" Paper format copies, in addition

to electronic copies, shall be served on the Assigned Commissioner and the ALJ. The official service list for this proceeding is available on the Commission's web page.⁶ Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission's web site meets that definition. Parties shall e-mail courtesy copies of all served and filed documents on the entire service list, including those appearing on the list as "State Service" and "Information Only."

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

6. Hearing Preparation

Hearings are scheduled for July 10 -11, 2007. If the hearings are to go forward as calendared, on or before Friday, July 6, 2007, San Jose Water is directed to organize a telephonic meet-and-confer conference with all parties to identify the principal issues on which the hearings will focus, key disputes, and any stipulations or settlements. Parties should also use the meet-and-confer to discuss witness schedules, time estimates from each party for the cross-examination of witnesses, scheduling concerns, and the order of cross-examination. The first morning of hearings on July 10, 2007 will begin at

⁶ www.cpus.ca.gov

10:00 a.m., but the time may be adjusted on subsequent days according to the participants needs.

Before post-hearing briefs are filed, the parties must agree on an outline, and use that outline for the briefs and reply briefs.

Finally, the parties should comply with the Hearing Room Ground Rules set forth in Appendix A hereto.

7. Procedure for Requesting Final Oral Argument

If EHs are held in this proceeding, pursuant to Rule 13.13, parties requesting final oral argument before the Commission should include that request in the opening line of their concurrent opening brief and should identify in the heading of the brief that the brief includes this request.

8. Rules Governing Ex Parte Communications

This proceeding is subject to Pub. Util. Code § 1701.3(c), which means that *ex parte* communications are prohibited unless certain statutory requirements are met (see also, Rule 7(c)). An *ex parte* communication is defined as “any oral or written communication between a decisionmaker and a person with an interest in a matter before the Commission concerning substantive, but not procedural, issues that does not occur in a public hearing, workshop, or other public proceeding, or on the official record of the proceeding on the matter.” (Pub. Util. Code § 1701.1(c)(4).) Commission rules further define the terms “decisionmaker” and “interested person” and only off-the-record communications between these two entities are “*ex parte* communications.”

The law permits Commissioners to engage in *ex parte* communications if all interested parties are invited and with no less than three business days’ notice. If a Commissioner agrees to meet with an individual party, the Commissioner must grant all other parties individual *ex parte* meetings of a

substantially equal period of time. The law permits written *ex parte* communications provided that those who provide the letter to a decisionmaker must provide a copy of the communication to each party on the same day. (Pub. Util. Code § 1701.3(c); Rule 8.2.) Parties must report *ex parte* communications as specified in Rule 8.3.

9. Intervenor Compensation

The PHC in this matter was held on March 16, 2007. Pursuant to § 1804(a)(1), a customer who intends to seek an award of compensation should file and serve a notice of intent to claim compensation no later than April 16, 2007. A separate ruling will address any notices of intent to claim compensation which may be filed.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.
3. *Ex parte* communications are subject to Article 8 of the Commission's Rules of Practice and Procedure.
4. Administrative Law Judge (ALJ) Richard Smith is the presiding officer in this proceeding.
5. Parties shall follow the service list rules as set forth herein.

6. Parties shall comply with the Hearing Room Ground Rules set forth in Appendix "A" hereto.

Dated March 30, 2007, at San Francisco, California.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich
Assigned Commissioner

APPENDIX A

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HEARING ROOM GROUND RULES

1. All prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony shall not be filed with the Commission's Docket Office.
2. Each party sponsoring an exhibit should, in the hearing room, provide two copies to the ALJ and one to the court reporter, and have copies available for distribution to parties present in the hearing room. If the exhibit is testimony that has already been served on the ALJ, she only needs to be provided with one copy for central files. The upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the exhibit.
3. As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.
4. To the extent possible, exhibits should be distributed before the proceeding "goes on the record" so that parties are prepared to go forward with cross-examination when the ALJ goes "on the record." Breaks can also be used for the distribution of documents.
5. Generally, corrections to an exhibit should be made in advance and not orally from the witness stand, and **only corrections of a substantive nature will be allowed from the witness stand**. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.
6. Individual chapters of large, bound volumes of testimony may be marked with separate exhibit numbers, as convenient.

APPENDIX A

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7. Partial documents or excerpts from documents must include a title page or first page from the source document; excerpts from lengthy documents should include a table of contents page covering the excerpted material.
8. Motions to strike prepared testimony must be made at least two working days before the witness appears, to allow the ALJ time for review of the arguments and relevant testimony.
9. Notices, compliance filings, or other documents may be marked as reference items. They need not be served on all parties.
10. Food and beverages are allowed IF you dispose of containers and napkins properly.

(END OF APPENDIX A)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated March 30, 2007, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo

***** SERVICE LIST *****

Last Update on 20-MAR-2007 by: SMJ
A0701035 LIST

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